

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
International Comparison and)	GN Docket No. 09-47
Consumer Survey Requirements in the)	
Broadband Data Improvement Act)	

**COMMENTS OF XO COMMUNICATIONS, LLC
AND NEXTLINK WIRELESS, INC.**

XO Communications, LLC (“XO Communications”) and Nextlink Wireless, Inc. (“Nextlink”) hereby comment on the Commission’s *Public Notice* regarding implementation of sections 103(b) and 103(c) of the Broadband Data Improvement Act (“BDIA”).¹ These BDIA provisions direct the Commission to include an international comparison in its annual broadband report, and to conduct a consumer survey of broadband service capability. For its international comparison, the Commission’s report should include an examination of the pro-competitive policies – including network unbundling rules – of other administrations that have been effective in promoting broadband penetration. In its consumer survey, the Commission should gather and report information regarding copper-based broadband delivery technologies separately from information concerning other wireline broadband technologies. To this end, the Commission’s broadband survey should collect customer data held by carriers, since carriers typically are more likely to be familiar with the technical and other relevant

¹ *Comment Sought on International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act*, Public Notice, GN Docket No. 09-47, DA 09-741 (Mar. 31, 2009) (“*Public Notice*”); Broadband Data Improvement Act of 2008 (“BDIA”), Pub. L. No. 110-385, 122 Stat. 4096 (codified at 47 U.S.C. §§ 1301-1304).

characteristics of their service offerings than their customers, especially residential consumers.

I. THE COMMISSION SHOULD EXAMINE THE PRO-COMPETITIVE GOVERNMENTAL POLICIES – INCLUDING NETWORK UNBUNDLING RULES – THAT HAVE FOSTERED EFFICIENT GROWTH IN BROADBAND PENETRATION IN OTHER COUNTRIES

In the *Public Notice*, the Commission invites parties to comment on how it can effectively implement the international comparison of broadband service capability required by the BDIA. Notably, other international comparisons of broadband deployment have recently been the subject of debate in the United States. For instance, the Organisation for Economic Co-operation and Development's ("OECD's") rankings have placed the United States below the top ten countries for broadband penetration, and in June 2008 the United States ranked fifteenth in this category.² While some observers have challenged the accuracy of this OECD ranking, no one contends that the United States – the largest broadband market among the OECD nations – ranks among the top five countries in broadband penetration. Given this reality, it is critical that the Commission closely examine the factors that have resulted in greater broadband deployment in other countries.

Robust competition in the broadband marketplace is critical to achieving high broadband penetration levels, fostering the deployment of innovative, high-quality services, and ensuring affordable broadband rates. Accordingly, in its international comparison, the Commission should focus on pro-competitive regulatory initiatives

² OECD Broadband Statistics, "Broadband Subscribers per 100 Inhabitants" (June 2008), available at: <<http://www.oecd.org/dataoecd/21/35/39574709.xls>>).

undertaken by other administrations that have proven successful in promoting broadband deployment, and determine whether they can be adapted to the U.S. marketplace.

In particular, XO and Nextlink urge the Commission to examine the effects that pro-competitive network unbundling policies implemented by other countries have had on broadband penetration. Numerous foreign administrations have established rigorous unbundling rules which permit competitive providers to obtain access to unbundled network elements (“UNEs”) from incumbents at reasonable prices. According to the OECD, 28 of the 30 member nations have adopted some form of unbundling requirements, including countries where facilities-based broadband competition between cable operators and incumbent telephone companies is vigorous.³ For example, the OECD reports that the Netherlands has strong infrastructure-based rivalry between cable modem service and incumbents’ Digital Subscriber Line (“DSL”) offerings, and has augmented this facilities-based competition by encouraging the competitive entry of additional broadband providers utilizing UNEs. With this approach, the Netherlands has achieved the highest rate of deployment of competitive DSL equipment among all OECD countries.⁴

The Telecommunications Act of 1996 requires the Commission to adopt pro-competitive policies in carrying out its regulatory responsibilities. In performing the international broadband comparison required by the BDIA, therefore, the Commission

³ *Broadband Growth and Policies in OECD Countries*, Organisation for Economic Co-operation and Development, at 53 (2008) (“2008 OECD Broadband Report”), available at: <<http://browse.oecdbookshop.org/oecd/pdfs/browseit/9308021E.pdf>>.

⁴ 2008 OECD Broadband Report at 51.

should look to countries that regulate broadband services pursuant to a similar pro-competition mandate.

II. THE COMMISSION'S CONSUMER SURVEY SHOULD CLEARLY DISTINGUISH BETWEEN FIBER-BASED AND COPPER-BASED BROADBAND DELIVERY TECHNOLOGIES

The *Public Notice* also invites comment on how the Commission can effectively implement the consumer survey requirements of the BDIA. Section 103(c)(1) of the BDIA directs the Commission to conduct and publicize periodic surveys of consumers in urban, suburban, and rural areas in the business and residential consumer markets. In these surveys, the Commission must determine, among other things, the types of technology used to provide broadband service, the amounts per month paid by consumers for this service, and the data speeds of such service.

In surveying current broadband technologies, XO and Nextlink urge the Commission not to include all wireline facilities in a single, undifferentiated category. Rather, to assess accurately the continuing role of copper-based technologies in the provision of advanced, high-speed services, the Commission should report separately on the progress of copper-based and fiber-based broadband facilities in serving business and residential consumers. As XO has pointed out in numerous Commission proceedings, carriers today can use copper loops to provide customers with very high-bandwidth services. Ongoing technological advances will enable copper plant to support even greater transmission speeds in the future. In fact, given its ubiquitous deployment, line-powered reliability, and increasing bandwidth capabilities, copper-based technology is

uniquely capable of serving and continuing to serve the needs of residential and business consumers.⁵

Establishing a separate category limited to DSL, Ethernet over copper, and other copper-based technologies will help the Commission in evaluating the role of copper plant in broadband deployments around the United States. The Commission could use this process to determine not only where consumers currently receive broadband service through copper facilities, but also where residential and business consumers have access to copper loops that *could* be used for the provision of broadband service. With these data, the Commission could gain a better understanding of the competitive harm caused by incumbent local exchange carriers' ("LECs") ongoing, unchecked retirement of copper plant.⁶

The Commission cannot perform this analysis, however, if its survey methodology focuses exclusively on broadband end users, since residential and business consumers typically lack knowledge on certain key factors identified in the BDIA, including the type of technology used by their providers and their services' transmission

⁵ See, e.g., Comments of NuVox Communications and XO Communications, LLC *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 07-45, at 3-6 (May 16, 2007).

⁶ To ensure the widespread and efficient deployment of high-speed and advanced services over copper loop facilities, XO Communications and a number of other competitive carriers have petitioned for changes to the Commission's existing rules relating to the retirement of copper loops and subloops. See Petition of XO Communications, LLC, Covad Communications Group, Inc., NuVox Communications, and Eschelon Telecom, Inc., for a Rulemaking to Amend Certain Part 51 Rules Applicable to Incumbent LEC Retirement of Copper Loops and Copper Subloops, RM-11358 (Jan. 18, 2007).

speeds. To obtain this important information, the Commission should also collect consumer data held by carriers as a result of their provision of service to the public. Carriers are more likely than their residential and business customers to know whether the broadband service at a particular address is delivered over fiber, DSL, Ethernet over copper, or another copper-based technology.

Whether collected directly from consumers and business customers or through customer data provided by carriers, the Commission must preserve the confidentiality of the data obtained through these surveys. Protection of competitively sensitive and customer proprietary data is necessary to safeguard competition, preserve consumers' privacy, and encourage cooperation in this process from broadband providers. To this end, XO and Nextlink request that the Commission aggregate survey data in a manner that would prevent a disclosure of customer proprietary information or cause competitive harm to any broadband provider.

III. CONCLUSION

For the aforementioned reasons, XO and Nextlink urge the Commission to implement the international comparison and consumer survey provisions of the Broadband Data Improvement Act as described in these Comments.

Respectfully submitted,

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